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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

STACEY LYN BERGMAN et al.,

Defendants and Appellants.

E046674

(Super.Ct.No. BAF004935)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Patrick F. Magers, Judge.
Affirmed.

Eric R. Larson, under appointment by the Court of Appeal, for Defendant and
Appellant Stacey Lyn Bergman.

David McNeil Morse, under appointment by the Court of Appeal, for Defendant
and Appellant Karen Ann Moore.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and
Appellant Robert Douglas Bergman.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Ronald Jakob and Jennifer A. Jadovitz, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendants Stacey Lyn Bergman and Robert Douglas Bergman, husband and wife, and a third defendant, Karen Ann Moore, were charged in the same information with having committed several crimes against Kathleen Price on July 12, 2006.¹ The charges against all three defendants included assault by means of force likely to produce great bodily injury, torture, kidnapping, robbery, and making criminal threats in counts 1, 2, 3, 4, and 6, respectively.²

Defendants were tried together before two juries. The “green” jury considered the charges against Stacey; the “yellow” jury considered the charges against Robert and Moore. All three defendants were found guilty as charged in counts 1 through 4. The prosecution dismissed count 6, the criminal threats charge, against Robert following the close of evidence. Moore was found guilty in count 6; Stacey was found not guilty.³

¹ For ease of reference and in order to avoid confusion, we refer to defendants Stacey Lynn Bergman and Robert Douglas Bergman by their first names.

² Robert was further charged with assaulting Price with a hammer in count 5. A mistrial was declared on count 5 after the yellow jury was unable to reach a verdict on count 5. Moore was also charged with possessing a firearm as a felon in count 8. The yellow jury found Moore not guilty on count 8, and found not true an allegation that she personally and intentionally discharged a firearm in count 3.

³ In a bifurcated trial, the trial court found three prison prior allegations true against Robert. Stacey admitted she had one prison prior.

Stacey was sentenced to nine years to life; Robert was sentenced to 12 years, plus seven years to life; and Moore was sentenced to nine years eight months, plus seven years to life.

On this appeal, Stacey claims her conviction for assault by means of force likely to produce great bodily injury (count 1) must be reversed because it is a lesser included offense to the crime of torture (count 2). Moore and Robert join this claim. We find it without merit. Under the elements test, the crime of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1))⁴ is not a lesser included offense to torture (§ 206), because torture may be committed without using any type of force.

Robert claims there is insufficient evidence to support his torture and kidnapping convictions. He argues the evidence is insufficient to show he either directly perpetrated either crime or aided and abetted their commission, or that either crime was a natural and probable consequence of his assault on Price. Stacey joins Robert's claim to the extent it may benefit her. We find the claim without merit as to Robert or Stacey. We therefore affirm the judgments against each defendant in their entirety.

II. STATEMENT OF FACTS

A. *Prosecution Evidence*

Price was the principal witness for the prosecution. In July 2006, defendants and Price were friends. The four of them hung out together at Robert and Stacey's house on

⁴ All further statutory references are to the Penal Code unless otherwise indicated.

Helen Street in Cabazon and smoked methamphetamine. Price had known Robert and Stacey for approximately two years and had lived with them “on and off” at their Cabazon house. More recently, Price had become friends with Moore and had been staying with Moore and several others in Moore’s trailer on Bonita Street in Cabazon. Defendants were good to her and had taken her in when she was “on the streets.”

Shortly after midnight on July 12, Price was released from jail in Banning after being in custody about 14 days. Following her release, she first walked to a nearby house and left there with her friend Amy Lou. She and Amy Lou walked to Moore’s trailer on Bonita Street in order to collect Price’s purse, child support checks, and other belongings. When they arrived at the Bonita Street trailer, Price learned from Michael Horton, who was staying there, that Moore was now living with Robert and Stacy, and Price would have to retrieve her belongings at their house.

Price and Amy Lou left the trailer around 2:00 a.m., walked to Robert and Stacy’s house, and arrived sometime during the early morning hours. When they arrived, Moore and Robert were present, and Robert greeted Price “like he always did.” Price, Amy Lou, Robert, and Moore talked and smoked methamphetamine outside the house in the back. Stacey was asleep, but joined the group later.

Before Stacey joined the group, Robert asked Price to go into a trailer located next to his house and on his property. Price, Amy Lou, Robert, and Moore entered the trailer, then Moore and Robert both hit Price in the face. Price recalled that Moore hit her in the face several times, and Robert hit her once in her face with his closed fist. Robert and

Moore called Price a “rat bitch” and accused her of being a “snitch.” According to Price, it appeared that Robert and Moore believed she had “ratted” on them because she had been released from jail after only 14 days.⁵

At one point, Price fell over onto a bed and Robert hit her in the back of her head. Price begged Robert to stop hitting her, and he did. She told him she would never snitch on any of them and if they would stop hitting her, she would never tell anyone. While she was begging Robert to stop hitting her, Robert told her he was ““a stone cold killer.””

After Robert and Moore hit Price several times, Robert put duct tape around her mouth and head, and Moore tied her arms and feet with a thin blue rope. Price fell to the floor and Moore, wearing “[c]owgirl” boots, kicked Price several times in the face and stomach. At this point, Stacey then entered the trailer, began yelling at Price, and slapped Price in the face after Moore picked Price up off the floor. All three defendants laughed at Price as they were beating her.

Price’s face and chest hurt, she was bleeding, could not see, and felt as though she was “gonna die.” Moore left the trailer for a few minutes and returned with a can of lighter fluid.⁶ Moore looked at Price, laughed, and dousing her with the lighter fluid. The lighter fluid landed on Price’s chest and the front of her clothing. At this point, Price

⁵ While testifying at trial, Price had difficulty recalling some of the events of July 12, including the number of times she had been hit, what defendants said to her, the sequence of events, and what she later told police.

⁶ Price did not recall telling police it was Robert who left the trailer and returned with the lighter fluid.

thought defendants were going to kill her. Moore and Stacey then flicked lighted Camel cigarettes at Price, and Price caught on fire and screamed. She could feel her entire chest burning. She was able to put out the fire by beating her tied hands against her chest, but her shirt melted into her skin. Robert did not flick any cigarettes at Price, but was present while Stacey and Moore did so and as Price caught on fire and burned.

After Price put out the fire on her chest, Stacey put a jacket over her head, Moore untied her feet, and she was taken to a bedroom inside the house. All three defendants talked about what they should do with her. Inside the bedroom, Stacey removed the jacket from Price's head and sat her down on the floor. All three defendants smoked methamphetamine, blew smoke at Price, and talked about her child support checks, which Price had asked Moore to hold for her.

Moore told Price that Price was going to sign her child support checks and the title to Price's car, an Infinity, over to Moore, and Robert told Price that the money was going to be deposited into Robert and Stacey's bank account. Price did not want to sign over the checks or the title to her car, but agreed to do so because she feared being hurt further. She told defendants they could have everything if they would just let her go and stop hurting her.

Robert told her he would smash her fingers with a hammer if her signatures on the checks did not match. After someone untied Price's hands, Price signed one check and hesitated before signing another. At that point, Robert hit Price's hand once with a hammer that had a blue "bottom." Price understood that, by hitting her with the hammer,

Robert was warning her he would “hammer” her again if her signatures did not match. Price then signed the rest of the checks and signed the title to her Infinity over to Moore. All three defendants and Amy Lou were present when Price signed the checks and vehicle title.

Price recalled that, after she signed the checks and title, “the kids” were beginning to wake up and someone had stopped by the house. Price understood that defendants did not want anyone to see her, so someone put a jacket over her head, took her outside, and placed her in the middle of the backseat of Moore’s teal green Chevy truck. Stacey sat next to Price and had a knife in her hand. Robert and Stacey’s 16-year-old daughter, A., sat in the front passenger seat, and Moore drove. Moore had a knife and a gun. According to A., Robert stood in the doorway of the house and waved good-bye to her as she was sitting in the truck watching Stacey, Moore, and Price approach the truck. A. saw that Price had been beaten and her hands were tied.

Moore drove to several places before she eventually took Price to the home of Price’s father, Cecil McDowell, in Beaumont. She first drove to the trailer on Bonita, shot at the trailer door, and yelled at Horton to come out. Horton came out, asking what was going on. Moore told Horton Price had been beaten because she was a “rat” and “that’s what a rat looks like.” Moore told Horton to get into the truck. Horton got into the backseat and sat next to Price.

Moore then drove to “Danny and Tiona’s house,” which was a short distance from the trailer on Bonita. Moore went to the house, returned with Tiona, and told Tiona to

look at Price, saying “[t]hat’s what a snitch looks like beat up.” Tiona told Price she did not want to see her at her house again. Moore then dropped off A. at a Wal-Mart and stopped at a gas station. At some point during the drive, Stacey held a knife to Price’s throat. At intersections, Price was told to duck down so she would not be seen.

Moore called Price’s brother from her truck. She told him Price had been beaten because she was a snitch and to wait outside McDowell’s house because she was taking Price there. As the truck approached McDowell’s house, Price saw that several people, including her father McDowell and her brother, were waiting outside. Price ran to McDowell, who began to cry when he saw her. McDowell testified that a big green truck “rolled up sort of fast,” and Price either fell or was thrown out of the truck. She was badly beaten and crying. McDowell said it was “horrendous” and he was “appalled” and frightened at the sight of his daughter. According to Price, Moore threatened to kill her and her family and set McDowell’s house on fire if any of them called the police. McDowell heard Moore say something like “[s]hut up or we will kill your family.”

McDowell took Price to an emergency room in San Geronio. From there, Price was transported to Arrowhead Regional Medical Center for further treatment. Price suffered second degree burns on her entire chest and part of her neck. These burns covered five percent of her total body area. Her shirt had been burned to her skin and had to be pulled off with a utensil resembling a tweezer. Price also had a deep cigarette burn on her abdomen, which was “[r]eally painful” and “horrible” when inflicted, and several other cigarette burns on her body. Her legs, back, and other parts of her body were badly

bruised as a result of her having been kicked, thrown around, and falling inside the trailer. She had a “busted mouth” and one of her teeth, which had been chipped, fell out. She was hospitalized for approximately eight days.

On July 12, while she was being treated for her injuries, Price spoke to Riverside County Sheriff’s Deputy Shawn Winters and told him what had happened to her. Shortly thereafter, Deputy Winters and another investigator went to Robert and Stacey’s house. A special enforcement team was called, and a “flash ball grenade” was used. The officers had difficulty gaining access to the house due to a six-foot fence and dogs that were present. Stacey arrived at the house when the officers were present and was arrested and taken into custody. Robert and Moore were not present when the officers arrived. Robert was arrested around two weeks later; Moore “a while” after that.

Dolly Ingram lived in the trailer next to Stacey and Robert’s house. She returned home around 9:15 a.m. on July 12 after being out of town, and found the gate to the property locked, which was unusual. Because she did not have a key to the gate, Ingram yelled for someone to open the gate. Stacey opened the gate and told Ingram she could not enter the trailer for 20 minutes because “business was being conducted” there. Ingram went inside the house and waited for Stacey, who did not return after 20 minutes. At that point, Ingram left the house and did not return to the house or trailer until around 7:30 p.m. When she entered the trailer, Ingram saw that some of her rugs were missing, the sheets on her bed were disheveled, and the trailer was “a mess.” She found two of her

rugs near the washing machine with what appeared to be blood on them, and washed them.

Riverside County Sheriff's Detective Guy Moore searched Robert and Stacey's house on July 12. Inside the house, he found a hammer with a blue handle, black electrical tape, a 12-ounce can of Zippo lighter fluid on top of a dresser in one of the bedrooms, and two packs of Camel cigarettes. Inside the trailer, he found a Swiss-army style knife, a white rope, and a rug that appeared to have lighter fluid on it. Outside the trailer, he found two pieces of blue rope. He also found two rugs inside a dryer on the property.

Inside Moore's teal green Chevy truck, the detective found a pack of Camel cigarettes on the driver's side floor. On the driver's seat, he found a check endorsed by Price to Moore and Department of Motor Vehicle documents indicating that Price had signed the title of her car over to Moore. Also on the driver's seat, the detective found an envelope containing various papers from the Department of Child Support Services, including five check stubs with Price's signature on the back, and another piece of paper on which Price's signature appeared several times.

On July 13, around 2:30 a.m., Riverside County Sheriff's Detective George Stanley interviewed Stacey after she was advised of and waived her *Miranda*⁷ rights. The interview, which lasted approximately 45 minutes, was audio- and videotaped, and the videotape was played for the jury. The jury was given a transcript of the interview.

⁷ *Miranda v. Arizona* (1966) 384 U.S. 436.

During the interview, Stacey admitted that she, Robert, and Moore thought Price was a “rat” because she had been released early from jail. She also said she knew what had happened to Price was “wrong,” that she, Robert, and Moore had “snapped,” and that Robert and Moore had “split and left [her] . . . to face the music”

B. Defense Evidence

Neither Robert nor Moore presented any affirmative evidence. Stacey testified in the presence of both juries.

Stacey testified that she, Moore, and Price first went into the trailer together. Stacey then “socked” Price several times in the mouth and head. Stacey was angry with Price because she had found Price’s undergarments in Robert’s car. Stacey then left the trailer, returned, and saw that Moore and Price had “gotten into an altercation.” At this point, Robert and Amy Lou were also in the trailer. Robert “punched” Price in the face and head at least three times, and Moore extinguished a cigarette on Price’s stomach as Price lay on the floor.

Moore then brought the can of lighter fluid into the trailer, doused Price with it, and “someone” lit Price on fire. Defendants and Amy Lou all made sure the flames were out. There were flames coming from Price’s chest, and “it was scary.” Someone then put duct tape over Price’s mouth, Price’s hands were tied, and she was taken into the house.

Price signed her checks after she was brought into the house, while her hands were still tied. Stacey claimed Price voluntarily signed the checks because she had promised

defendants she would give them some money. She said Price was “asked,” not forced, to sign “some things,” and “agreed to sign that stuff over.” Stacey denied that Robert or anyone else hit Price with a hammer. Stacey never saw a hammer. Stacey also denied holding a knife to Price’s throat.

Moore called Price’s brother and asked whether they could take Price to him. He told them to take Price to her father’s house. Before they got into Moore’s truck to take Price to her father’s house, Stacey, Robert, and Moore all talked about what to do with Price. Stacey denied using methamphetamine on the day of the incident. She said Robert and Amy Lou both appeared to be under the influence of methamphetamine. She was unsure whether Moore was also under the influence.

III. DISCUSSION

A. The Crime of Assault By Means of Force Likely to Produce Great Bodily Injury is Not a Lesser Included Offense to the Crime of Torture

Stacey claims her conviction for assault by means of force likely to produce great bodily injury (§ 245, subd. (a)) in count 1 must be reversed because it is a necessarily lesser included offense to torture (§ 206), her conviction in count 2. Moore and Robert join this claim, as they were convicted of the same offenses in counts 1 and 2. We find the claim without merit.

In California, it has long been held that multiple convictions may not be based on necessarily included offenses. (*People v. Pearson* (1986) 42 Cal.3d 351, 355.) This is a judicially-created exception to section 954, which expressly allows a defendant to be

convicted of “any number of the offenses charged.” (*People v. Ramirez* (2009) 45 Cal.4th 980, 984; *People v. Ortega* (1998) 19 Cal.4th 686, 692.) When multiple convictions are based on necessarily included offenses, the conviction for the greater offense is controlling, and the conviction for the lesser offense must be reversed. (*People v. Pearson, supra*, at p. 355, citing *People v. Moran* (1970) 1 Cal.3d 755, 763.)

There are two tests for determining whether an offense is necessarily included in another: the “elements’ test” and the “accusatory pleading’ test.” (*People v. Ramirez, supra*, 45 Cal.4th at pp. 984-985.) Both tests are used in determining whether a defendant received adequate notice of the charges against him and may therefore be convicted of an uncharged crime, but only the elements test is used in determining whether a defendant may be convicted of multiple *charged* crimes. (*People v. Reed* (2006) 38 Cal.4th 1224, 1229-1230; see also *People v. Scheidt* (1991) 231 Cal.App.3d 162, 165-166 [observing that “only a statutorily lesser included offense is subject to the bar against multiple convictions in the same proceeding. . . .”], pp. 168-171 [explaining the origins of and reasons underlying the judicially-created bar against multiple convictions based on necessarily included offenses].)

Under the elements test, we look strictly to the statutory elements of the offenses, not to the facts of the case. (*People v. Ramirez, supra*, 45 Cal.4th at p. 985.) We ask whether “all the legal ingredients of the corpus delicti of the lesser offense [are] included in the elements of the greater offense.” [Citation.]” (*People v. Lopez* (1998) 19 Cal.4th 282, 288.) In other words, “if a crime cannot be committed without also

necessarily committing a lesser offense, the latter is a lesser included offense within the former.” (*Ibid.*; see also *People v. Montoya* (2004) 33 Cal.4th 1031, 1034.)

The crime of torture is defined in section 206: “Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury as defined in Section 12022.7 upon the person of another, is guilty of torture. [¶] The crime of torture does not require any proof that the victim suffered pain.” As section 206 indicates, torture has two elements: ““(1) the infliction of great bodily injury on another; and (2) the specific intent to cause cruel or extreme pain and suffering for revenge, extortion or persuasion or any sadistic purpose.”” (*People v. Burton* (2006) 143 Cal.App.4th 447, 451-452.)

In contrast to section 206, section 245, subdivision (a)(1) provides: “Any person who commits an assault upon the person of another with a deadly weapon *or* instrument other than a firearm *or* by any means of force likely to produce great bodily injury shall be punished” (Italics added.) Though section 245, subdivision (a)(1) defines a singular crime (*In re Mosley* (1970) 1 Cal.3d 913, 919, fn. 5), it “describes two different ways of committing” that crime, namely: “(1) by use of a deadly weapon or instrument other than a firearm *or* (2) by means of force likely to produce great bodily injury.” (*People v. Martinez* (2005) 125 Cal.App.4th 1035, 1043 (*Martinez*).)

The *Martinez* court held that a conviction for the first type of assault—by use of a deadly weapon or instrument other than a firearm—*is not* a statutorily lesser included offense to torture, because torture does not require the use of a deadly weapon or other

instrument. (*Martinez, supra*, 125 Cal.App.4th at p. 1044.) The court in *Martinez* did not determine, however, whether a conviction for the second type of assault—by means of force likely to produce great bodily injury—was a statutorily lesser included offense to torture, because the defendant was not convicted of this type of assault, or of violating section 245, subdivision (a)(1) by these means. (*Martinez, supra*, at pp. 1043-1044.)

Here, all three defendants were charged in count 1 with assaulting Price by means of force likely to produce great bodily injury, not by use of a deadly weapon or instrument other than a firearm. Moreover, the record clearly indicates that defendants were *convicted* in count 1 based on the theory they assaulted Price by means of force likely to produce great bodily injury, specifically by punching and kicking her, and not by use of a deadly weapon or instrument other than a firearm.

The rule barring multiple convictions based on necessarily included lesser offenses is concerned with whether the defendant has, in the same proceeding, suffered multiple convictions based on statutorily included lesser offenses. (*People v. Scheidt, supra*, 231 Cal.App.3d at pp. 170-171.) Thus, for purposes of applying the multiple convictions bar, the conduct of the defendant, or the factual basis upon which the defendant was convicted, must be considered. (See *Martinez, supra*, 125 Cal.App.4th at p. 1043, citing *People v. McGee* (1993) 15 Cal.App.4th 107, 114-115.) Thus here, we must determine whether assault by means of force likely to produce great bodily injury—for which defendants were convicted in count 1—is a statutorily lesser included offense to torture, for which defendants were also convicted in count 2.

The question was resolved against defendants' positions in *People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1456 (*Hamlin*).⁸ There, the defendant claimed he was entitled to an instruction on assault by means of force likely to produce great bodily injury because that crime was a lesser included offense to the charged crime of torture.⁹ He argued “[a]ny person who inflicts great bodily injury with the intent to torture is necessarily guilty of felony assault for use of force likely to produce great bodily injury.” (*Ibid.*) The *Hamlin* court disagreed. Applying the elements test, the court reasoned: “*Torture requires actual infliction of great bodily injury, but it does not require that the injury be inflicted by any means of force, let alone by means of force likely to produce great bodily injury.* For example, a caretaker would be guilty of torturing an immobile person in his care if the caretaker, acting with the intent to cause extreme suffering for a sadistic purpose, deprived that person of food and water for an extended period of time, resulting in great bodily injury to the person. In such a circumstance, the caretaker would have inflicted great bodily injury without using any force and thus would not be guilty of committing assault by means of force likely to produce great bodily injury. Because the use of force is not a necessary element of the

⁸ Though *Hamlin* was decided in February 2009, before any of the parties filed their briefs on this appeal, neither defendants nor the People have cited the case in their briefs. Trial took place in mid-2008, before *Hamlin* was decided.

⁹ Here, both juries were instructed that assault by means of force likely to produce great bodily injury was a lesser-included offense to torture. This does not affect our analysis, however.

crime of torture, assault by means of force likely to produce great bodily injury is not a lesser included offense of torture.” (*Ibid.*, some italics added.)

The reasoning of *Hamlin* is sound and we adopt it here. In short, assault by means of force likely to produce great bodily injury is not a lesser included offense to torture under the elements test, because torture can be committed without inflicting great bodily injury by any means of force. We therefore reject defendants’ claims that their convictions in count 1 must be reversed.

B. Substantial Evidence Supports Both Robert’s and Stacey’s Torture and Kidnapping Convictions

Robert claims insufficient evidence supports his torture and kidnapping convictions. He specifically argues there is insufficient evidence he directly perpetrated either crime, or aided and abetted Stacey or Moore in the commission of either crime.¹⁰ Stacey joins this claim to the extent it may benefit her, without additional argument. For the reasons we explain, we conclude substantial evidence shows (1) Robert aided and abetted Stacey and Moore in their torture and kidnapping of Price, and (2) Stacey directly perpetrated both crimes.

¹⁰ Robert also argues there is insufficient evidence that the torture and kidnapping of Price were natural and probable consequences of his assault and robbery of Price. Because we conclude substantial evidence shows Robert aided and abetted both crimes, we find it unnecessary to address this argument.

1. Standard of Review

Our standard of review is well settled. In considering a criminal defendant's claim that insufficient evidence supports his conviction for a criminal offense, we review the entire record in the light most favorable to the judgment and determine whether the record contains substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could have found the defendant guilty of each element of the crime beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578; *People v. Staten* (2000) 24 Cal.4th 434, 460.)

The standard of review is the same when the prosecution relies on circumstantial evidence, because circumstantial evidence may be sufficient to prove a defendant's guilt beyond a reasonable doubt. (*People v. Vu* (2006) 143 Cal.App.4th 1009, 1024, citing *People v. Thomas* (1992) 2 Cal.4th 489, 514.) On appeal, the defendant bears the burden of affirmatively showing that the evidence is insufficient to support his conviction. (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.)

2. Elements of Torture and Kidnapping

As discussed, there are two elements to the crime of torture: ““(1) the infliction of great bodily injury on another; and (2) the specific intent to cause cruel or extreme pain and suffering for revenge, extortion or persuasion or any sadistic purpose.”” (*People v. Burton, supra*, 143 Cal.App.4th at pp. 451-452.) Intent to cause cruel or extreme pain, like other forms of intent, is rarely susceptible of direct proof and must usually be

inferred from the facts and circumstances surrounding the offense or other circumstantial evidence. (*People v. Pre* (2004) 117 Cal.App.4th 413, 419-420.)

Kidnapping generally requires proof that ““(1) a person was unlawfully moved by the use of physical force or fear; (2) the movement was without the person’s consent; and (3) the movement of the person was for a substantial distance.”” (*People v. Dalerio* (2006) 144 Cal.App.4th 775, 781; § 207, subd. (a).)¹¹

3. Aider and Abettor Liability

All persons who directly perpetrate a crime or aid and abet in its commission are liable as principals for the crime. (§§ 30, 31; see *People v. Mendoza* (1998) 18 Cal.4th 1114, 1122-1123.) “[A]n aider and abettor is a person who, “acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime.”” [Citations.]” (*People v. Jurado* (2006) 38 Cal.4th 72, 136.) An aider and abettor need not commit the actus reus of the crime by his own act. (*People v. Beeman* (1984) 35 Cal.3d 547, 560.)

Neither a defendant’s mere presence at the scene of a crime nor his knowledge of the crime but failure to prevent it are sufficient, in and of themselves, to show the defendant aided and abetted the commission of the crime. (*People v. Campbell* (1994) 25

¹¹ Section 207, subdivision (a) defines kidnapping, in relevant part, as follows: “Every person who forcibly, or by any other means of instilling fear, steals or takes, or holds, detains, or arrests any person in this state, and carries the person into another country, state, or county, or into another part of the same county, is guilty of kidnapping.”

Cal.App.4th 402, 409, citing *People v. Durham* (1969) 70 Cal.2d 171, 181.) Still, a defendant's presence at the scene, companionship with the perpetrators, and conduct both before and after the crime are factors which may be considered in determining whether the defendant aided and abetted the commission of the crime. (*People v. Campbell, supra*, at p. 409; *People v. Dyer* (1963) 217 Cal.App.2d 176, 180.)

An aider and abettor must act ““with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense.” [Citation.]” (*People v. McCoy* (2001) 25 Cal.4th 1111, 1118, citing *People v. Beeman, supra*, 35 Cal.3d at p. 560.) Thus, when the crime in question requires a specific intent, the aider and abettor must share the specific intent of the perpetrator, that is, he or she must know the full extent of the perpetrator's criminal purpose and must give aid or encouragement with the intent or purpose of facilitating the perpetrator's commission of the crime. (*People v. Lee* (2003) 31 Cal.4th 613, 624, citing *People v. Beeman, supra*, at p. 560.)

4. Substantial Evidence Supports Robert's and Stacey's Torture Convictions

Robert argues the People's case against him on the torture and kidnapping charges was based on his “mere presence during certain portions of the incident, [his] generalized and conceded hostility toward Price, and the assumption that [his] hostility, as manifested by [his] assault on and robbery of Price, necessarily embraced [an] intent to inflict even greater bodily harm and commit even more serious crimes against her.” Robert admits the evidence shows he assaulted Price and participated in robbing her of her child support

checks and the title to her vehicle; however, he argues there was no evidence he participated in “her subsequent torture and kidnapping[.]” We disagree with Robert’s view of the evidence.

Contrary to Robert’s argument, the evidence showed that Robert was not merely present when Price was set on fire. Even assuming that Robert was not the one who brought the lighter fluid to the trailer, as Price told Officer Winters, Price’s trial testimony unequivocally showed that Robert instigated, facilitated, and encouraged the vicious and callous assault on Price, which culminated in her torture and kidnapping. Robert, along with Moore and Stacey, punched Price in the trailer before Price was set on fire. Robert was also calling Price a “rat bitch” as he, Stacey, and Moore kicked and punched Price. Robert also must have seen Moore douse Price with the lighter fluid and must have known, at least by that point, that Price was going to be set on fire. Yet, Robert watched in close proximity and did nothing to stop Stacey or Moore from flicking lighted cigarettes at Price and setting her on fire.

In short, Robert’s companionship with Moore and Stacey and his participation in beating Price both before and after she was set on fire shows he intended to punish her for being a “rat” by beating her *and* setting her on fire. Robert’s subsequent act of hitting Price’s hand with a hammer—in the house after Price was set on fire—was also vicious and cruel and further indicated Robert intended to encourage and facilitate Stacey’s and Moore’s torture of Price by setting her on fire.

As indicated, Stacey joins Robert's substantial evidence claims without offering any argument concerning her role in the crimes. Stacey, like Robert, was not merely present while Price was tortured. Rather, Price's trial testimony and pretrial statements to police were sufficient to show that Stacey directly perpetrated the torture of Price by flicking lighted cigarettes at her and setting her on fire. In addition, Stacey's own admissions to police and at trial showed she intended to avenge Price either for sleeping with Robert, for being a "rat," or both.

5. Substantial Evidence Supports Robert's and Stacey's Kidnapping Convictions

Substantial evidence also showed that Robert aided and abetted Stacey and Moore in the kidnapping of Price. The prosecution argued that the kidnapping of Price was based on her being taken to several places in Moore's truck before she was dropped off at her father's house in Beaumont. Price testified she heard all three defendants discussing what to do with her after they had beaten her, set her on fire, and forced her to sign over her child support checks and vehicle title. Robert stood in the doorway of the house and waved while Moore and Stacey led Price, with her hands tied, to Moore's truck. Moore and Stacey then drove Price, against her will, to the Bonita Street trailer to pick up Horton, then to Danny and Tiona's house. At both places, Moore announced that Price had been beaten because she was a "rat." Robert's participation in the beating and torture of Price and his subsequent discussion with Stacey and Moore regarding what to do with Price, showed he encouraged Stacey and Moore in kidnapping Price.

Substantial evidence also showed Stacey directly perpetrated the kidnapping of Price along with Moore. Stacey sat next to Price in the backseat of Moore's truck and at times held a knife to Price's throat while Moore drove Price around and "displayed" her to Horton and Tiona in order to show them what happens to persons who "rat."

IV. DISPOSITION

The judgments are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ King
J.

We concur:

/s/ Hollenhorst
Acting P.J.

/s/ Miller
J.